

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Leah C. Evans

Case No. 91-03988

Name of Respondent(s)

Hampton Securities, Inc.  
Comprehensive Capital Corporation  
Jerome P. Calaway  
Henry Bazarte, III  
George Kevorkian

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**REPRESENTATION**

For Claimant, Leah C. Evans ("Evans"): Marina Shank-Klein, Esq. of Marina Shank-Klein, P.A.

For Respondents, Comprehensive Capital Corporation ("CCC") and George Kevorkian ("Kevorkian"): William S. Isenberg, Esq. of Latona & Isenberg.

For Respondent, Hampton Securities ("Hampton"): Delores Easthom of Hampton Securities, Inc.

Respondent, Jerome Calaway ("Calaway"): pro se.

Respondent, Henry Bazarte ("Bazarte"): pro se.

**CASE INFORMATION**

Statement of Claim filed: December 16, 1991. Claimant's Submission Agreement signed: December 9, 1991.

Respondents, George Kevorkian and CCC's, Statement of Answer filed: March 5, 1992 and Submission Agreements signed: February 19, 1992 by George Kevorkian.

Respondent, Calaway's, Statement of Answer filed: March 18, 1992 and Submission Agreement signed March 12, 1992.

Respondent, Henry Bazarte's, undated Statement of Answer filed: April, 1993.

Respondents, Hampton and Bazarte failed to appear at the hearing on this matter or to file Submission Agreements and Hampton further failed to file an Answer as required by Sections 12 and 25 of the Code (see Other Issues).

### HEARING INFORMATION

On May 4, 5, 6 and 12, 1993 and June 29, 1993, in Fort Lauderdale, Florida, hearings lasting 9 sessions were conducted.

### CASE SUMMARY

Claimant alleged that Respondent, Bazarte, solicited her business and she opened an account with Respondent, Hampton, with Bazarte as her representative; that upon opening the account, she informed Bazarte that she wanted her funds to be invested conservatively; that instead, Bazarte invested her funds in highly speculative, low grade securities which were unsuitable; that the unsuitable and fraudulent transactions continued when Bazarte switched Claimant's account to his new employer, G.K. Scott and Co. ("GKS") and that some of these trades were made with Respondent, Calaway, listed as the representative in-charge of Claimant's account; and, that Respondent's actions constituted breach of fiduciary duty, fraudulent transactions under Florida statute 517.301, common law fraud, and negligent supervision. Claimant further alleged that CCC is the successor in interest to GKS.

Respondent, Calaway, denied all allegations of wrongdoing and alleged that: Claimant was not a client of his, and Claimant's account was only transferred under his registered representative ("RR") number while waiting for Bazarte to get his RR number transferred to GKS. Calaway further alleged all trading done under his RR number was unsolicited.

Respondents, Kevorkian and CCC, denied all allegations of wrongdoing and alleged that: they are not liable to Claimant for any of the counts in the Statement of Claim. Respondents, Kevorkian and CCC, raised the affirmative defenses of: failure to mitigate damages; failure to use due diligence; the losses were caused by Claimant's negligence; no proximate cause; unclean hands; comparative negligence; and good faith on part of Respondents.

Respondents, Kevorkian and CCC, filed a Counterclaim for attorney's fees.

Respondent, Bazarte, did not deny allegations of wrongdoing, but instead, Bazarte alleged that he was responsible for ruining Claimant financially; that his superiors at Hampton misrepresented to him the quality of the investments he made for Claimant for the purpose of unloading their excess inventory; and, that Calaway had nothing to do with the losses in Claimant's account.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in excess of \$170,000.00, pre judgment interest, punitive damages, interest, costs, and attorney's fees.

Respondents, Kevorkian and CCC, requested dismissal and attorney's fees. Other Respondents requested dismissal.

### **OTHER ISSUES CONSIDERED & DECIDED**

(1) Based upon the record evidence contained in the NASD file, the Panel finds adequate service upon and notice to Hampton and Bazarte. Neither Hampton nor Bazarte executed a Submission Agreement and Hampton did not file an Answer, as required by Sections 12 and 25 of the Code. The Panel finds that, by virtue of Hampton's NASD membership and Bazarte's association with member firms, along with the service upon and notice to these parties, the Panel has jurisdiction over them. Pursuant to Section 29 of the Code, the Panel proceeded with the hearing and enters this Award as if Hampton and Bazarte had appeared and defended this matter.

(2) Based upon the record evidence and memoranda of law filed by the parties, the Panel finds that CCC is the successor in interest to GKS.

(3) The parties who were present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, these parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

(1) Respondent Calaway is found liable and shall pay to the Claimant the

amount of \$9,141.00 plus interest at the legal rate of 12% in the amount of \$4,205.00 for a total due to the Claimant of \$13,347.00.

(2) Respondents, Bazarte and Hampton, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$106,923.00, plus interest at the legal rate of 12% in the amount of \$26,892.00 for a total due to the Claimant of \$133,815.00.

(3) Respondents, CCC, Kevorkian and Bazarte, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$22,971.00; plus interest at the legal rate of 12% in the amount of \$5,777.00 for a total due to the Claimant of \$28,748.00.

(4) All Respondents are also found liable, jointly and severally, and shall pay to the Claimant costs and attorney's fees in an amount to be determined by a court of competent jurisdiction pursuant to Section 517.211, Florida Statutes.

(5) Respondents, Kevorkian and CCC, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$43,122.00 for punitive damages. The Panel bases its award of punitive damages on its finding of reckless and fraudulent conduct by Kevorkian and against CCC as successor corporation based upon Claimant's proof of such a degree of identity of the successor with the predecessor to justify the conclusion that those responsible for the reckless conduct of the predecessor will be punished and the successor will be deterred from similar conduct. Martin v. Johns-Manville Corporation, 469 A.2d 655 (PA super 1983) and other authority cited in Claimant's Memorandum of Law. The Panel derives its authority to award punitive damages from the Federal Arbitration Act and the case law construing that Act.

(6) Respondents, Kevorkian and CCC's, request for attorneys fees is denied.

(7) Claimant/Counter-Respondent, Evans, is found not liable and, therefore, all claims against her are hereby dismissed.

#### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### **FORUM FEES**

(1) Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$6,750.00 (9 sessions x \$750.00).

(2) All Respondents are hereby assessed \$6,750.00, jointly and severally, \$750.00 of which shall be paid directly to the Claimant, and \$6,000.00 of which shall be paid to the National Association of Securities Dealers, Inc.

(3) the NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

(4) All Respondents, jointly and severally, shall reimburse the Claimant \$200.00 for the non-refundable filing fee.

(5) The NASD shall retain the non-refundable filing fee of \$500.00 which is due from Respondents Kevorkian and CCC for their Counterclaim in the above-styled matter.

Fees are payable to the National Association of Securities Dealers, Inc.

**Concurring Arbitrators' Signatures**

/s/  
Arthur J. Leibell, Esq., P.A.

**Public/Chairperson**

/s/  
Seymour Roberts

**Industry**

/s/  
Robert Wachterman

**Public**

Date of Decision: 8-10-93